THE MERC MESSENGER

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

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INSIDE

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COMMENTS FROM THE CHAIR

by Maris Stella Swift, Chair

Three years ago the commission decided that it should adopt a code of ethics. I have always meant to include the code in an issue of the MERC Messenger but other matters needed attention so I never took the time to mention it until now. As many of you know, there is a State Ethics Act (1973 PA 196) which governs our activities as public officers and employees. We felt, however, that our special circumstances required that we set out additional restrictions for ourselves. We reasoned that since we both administer PERA and act as a neutral appellate body we must do all that we can in order to maintain our neutrality with the parties that come before us. (See page ---- for full text of code.) **

We relied heavily on the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and the Michigan Code of Judicial Conduct in the drafting of our code. There are many issues addressed in the code but the four areas of concern that all three commissioners wanted specifically addressed were: First, the prohibition of commissioners as arbitrators in public sector cases where either party is subject to PERA (See Guideline 1 A). Second, the avoidance of ex parte communications and public comments about a pending case. (See Guidelines 2 B and D.) Third, the prohibition of commissioners accepting funds or gifts, including travel allowance and meal reimbursements from those who come before MERC (See Guideline 4A) and Fourth, the prohibition against commissioners spending too much time with those who have cases before the commission. (See Guideline 4C).

Prior to the adoption of the code it seemed we were always discussing the appropriateness of our activities. The discussion generated during the drafting of the code forced us to clearly decide how we must act in order to insure our neutrality as individuals and as a commission. We know that our code does not address all of the ethical dilemmas that we may face but in the years since its adoption it has proven to be a solid step in the right direction.

In closing I'd like to mention that this is the first MERC Messenger with Ruthanne Okun as the Director of the Bureau of Employment Relations. All of us on the commission wish Ruth the very best in her new position. We also wish to thank Judge James Kurtz for his term as Acting Director . Judge Kurtz kept things running smoothly as we said good-bye to Sol Sperka and awaited the arrival of Ruth. The commission considers itself lucky to have both Ruth and Jim working on its behalf.

BUREAU DIRECTOR'S COLUMN

by Ruthanne Okun, Director, BER

You may have heard that the "gavel has changed hands" at BER, as I happily have been selected to sit in the Director's chair. And while, on occasion, I have to pinch myself to assure that this is really happening, on most occasions, I recognize the reality and look forward to the opportunity to work as a colleague with people like yourselves, many of whom I have looked up to as legends in our field.

By way of introduction, my name is Ruthanne Okun, and I have worked in employment relations for the past 18 years. I am a graduate of Michigan State University (Go Green!) and of Notre Dame Law

School (don't hold that against me!). Prior to law school, I served as Personnel & Employee Relations Director of Larden Co., a two facility manufacturing operation located in Davisburg, and Plymouth, MI with over 300 employees. Most recently, I was a member of the Logan, Wycoff & Okun, P.C. law firm, located in the downriver community of Riverview. This combination of legal experience in labor law and direct hands-on experience handling the employee relations function, has provided me with what (I hope) is a unique perspective on labor relations and human resources issues. The most significant accomplishment on my resume is my 4 year old son, Daniel, who along with my family and my career at the Bureau, helps to make life busy, fulfilling and a real challenge.

As I attempt for the first time to "put pen to paper" and etch out my first Director's column, I would be remiss if I failed to recognize Shlomo (Sol) Sperka for his efforts and accomplishments which have kept our Bureau thriving over the past 15 years. Many a practitioner (including me) has consulted with Sol on more than one occasion concerning a burning issue or in an effort to pinpoint a case in MERC's history. And with Sol's patience and his vast recall of MERC law, we were never led astray.

Similar kudos go to former Acting Director and most senior ALJ Jim Kurtz for keeping the agency afloat during the past 6 months before I was able to come aboard. Jim has made my transition into the BER smoother than I had ever imagined. His patience in assisting me to accomplish such tasks as case assignment and approval of purchase requisitions and payroll, and his efforts to school me in the never-ending list of computer passwords for the various systems must be acknowledged.

And now to BER and my visions for the future. Those of you who attended the 1998 Public Sector Seminar in June recall that the question was posed there whether MERC is at its crossroads and whether there is a genuine need for the agency to re-define itself and our mission. This question is not one that will be answered today or tomorrow -- nor can it be answered by me alone, by our staff or Commission; instead, it requires that you -- our consumer -- provide your thoughts and input. Indeed, that re-definition and our newly-created mission depends in significant part upon your vision of MERC and what you desire us to be.

To open the conversation, however, let me tell you a little about my preliminary vision of MERC and how I suggest that we seek to improve on the current picture. Obviously, I view our Bureau as a consumer driven agency; therefore, my first goal is to assure that we are doing all that is possible to ascertain that our consumers are best served. Thus, we need to refine our telephone answering system, our MERC Messenger, MERC's Web-site, our Annual Public Sector Conference, and our accessibility to the public -- all as part of our effort to serve the needs of our constituents like you. Visit our Web site at http://www.cis.state.mi.us/ber/ and "pencil in" on your calendar the date of May 13, 1999, and May 14, 1999, for our next Public Sector Conference -- this time to be held at the Kellogg Center on the beautiful and renowned campus of Michigan State University (which is purely a coincidence).

Other ideas to improve MERC's accessibility include amending MERC's rules and perhaps even the Act 312 and Act 112 rules to ensure that they are user friendly, comprehensible, consistent, and well-disseminated. And, as the year 2000 looms before us, we need to assure that all MERC rules and procedures are brought into the 21st century, taking into consideration such technological advances as the advent of facsimile machines. Our Bureau should publish its informal policies and procedures, so that the public is well-aware of how we do business. And we need to place MERC decisions, on the Web, to assure that those opinions are more available to those who rely so heavily upon them in determining their future conduct. And, in October, we hope to get together as many members of our previously-established MERC Advisory Committee as are available to provide us with input into the various issues relevant to our agency.

Next, I envision MERC as an agency in which we not only react to resolving labor disputes once they arise, but also are pro active in working with the parties to minimize the occurrence of such disputes in the first instance. Implementing staff training to assure that our expert staff is even more up-to-date on current trends in labor relations and developing specialized training for our arbitrators, fact findings, neutrals, and practitioners are also in the works. And perhaps, some easy to read brochures on such matters as "how to take a case before MERC," etc. can be prepared. Because our agency works best if our consumers are aware of the law and our procedures, we at MERC need to dedicate ourselves to ensuring that the opportunity exists to learn them.

And now to you -- our most important asset and the reason that we exist. We need to hear from you and to learn whether MERC is meeting your needs and wants, or whether our focuses should be directed elsewhere. Please take the time to pick up the telephone or stop by our offices, or just drop us a quick note with your opinions and thoughts Then years from now, when you review the growth that has taken place at MERC, you'll note with well-deserved pride that, at its inception, you have played a significant role in bringing about that progress.

Finally, thank you in advance for taking the time to play a vital role in MERC's future.

PRESENTATIONS....

On September 30, 1998, members of MERC/BER will be attending the MPELRA's (Michigan Public Employer Labor Relations Association annual conference. There presentation was entitled "Meet the New MERC/BER director and an update on recent MERC activities and trends." At the same conference, BER's labor mediator James Amar will presented to attendees on "Facilitated Bargaining Models." The MPELRA took place at Shanty Creek in Bellaire, MI.

On October 7, 1998, the Bureau Director will be at the Michigan Negotiators' Association at Shanty Creek in Bellaire, MI. She will be presenting to this group of School District employers concerning my visions for the BER and recent MERC trends and activities.

On October 8, 1998, the Bureau Director will be in Muskegon, Michigan at the Michigan Community College Association. She will be presenting to the group of Community College representatives the following: "Managing the Crosscurrent of the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), Worker's Compensation, and Long Term Disability."

BER Labor Mediator, Richard Ziegler currently is attending the convention of the Police Officers' Labor Council in Traverse City and is expected to receive a 15 year service award from the POLC. Rich also made a presentation on August 6, 1998 in St. Clair Shores to the Untied Plant Guards. He spoke with James Statham of the Federal Mediation and Conciliation Service and others from FMCS on the subject of "Interest-Based Bargaining."

BER Labor Mediator, Micki Czerniak has recently received an award for her exemplary service as Executive Secretary to the Michigan State Board of Ethics from 1992-98. Board Chair, Christopher M. Murray presented a tribute to Micki, noting her outstanding service with the Board and expressing, on behalf of the people of the State of Michigan, his deepest appreciation for her dedicated efforts and many accomplishments during her years of service with the Board.

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CODE OF ETHICS

Purpose: The purpose of this code is to state ethical guidelines for the commission in order to uphold the integrity and independence of the commission.

Guideline 1: A Commission member should avoid impropriety and the appearance of impropriety.

A. Commissioners should respect the rights of a party and treat all parties fairly, and with courtesy and respect.

B. A commissioner should not allow social, professional or political affiliation to interfere with the rendering of a fair and impartial decision based on the merits of the case.

C. A commissioner shall not accept an appointment as an arbitrator for a public sector case in Michigan where the public sector employer or labor organization is subject to PERA.

D. A commissioner shall not represent public sector employers or unions subject to PERA.

E. A commissioner who is engaged by a public sector employer or union shall not participate in matters involving that organization that come before the commission.

Guideline 2: A commissioner should perform the duties of office in an impartial and diligent fashion.

A. A commissioner should be faithful to the law and maintain professional competence in it. A commissioner should not be swayed by partisan interest, public clamor, or fear of criticism.

B. A commissioner should abstain from public comment about a pending case. This subsection does not prohibit a commissioner from making public statements in the course of official duties or from explaining for public information the procedures of the commission. A commissioner should, however, exercise caution and discretion before making any public comments particularly where such comments may compromise the impartiality of the commission.

C. A commissioner should dispose promptly of the business of the commission.

D. A commissioner shall avoid ex parte communications.

Guideline 3: A commission member may engage in activities to improve labor relations in the state.

A. A commissioner is in a unique position to contribute to the improvement of labor relations. To the extent that time permits, commissioners are encouraged to do so, either independently or through professional associations and organizations.

B. A commissioner shall not be a member or an officer of those organizations that represent only management or only labor.

C. A commissioner may speak, write, lecture, teach and participate in other activities concerning labor law and labor relations.

D. A commissioner may appear at a public hearing before an executive or legislative body on matters concerning labor law and labor relations, and may consult with such executive or legislative body on such matters.

Guideline 4: A commissioner should minimize the risk of conflict of interest.

A. A commissioner should not solicit funds for any educational, religious, charitable, civic or political purpose from anyone who may come before the commission on official business.

B. A commissioner shall not accept any funds or gifts from any organization that may come before the commission as a party in dispute. This includes, but is not limited to, travel per diem, honorariums and expense reimbursements.

C. A commissioner shall not fraternize excessively with parties or representatives, especially when cases are pending before the commission involving those parties.

Adopted by the Michigan Employment Relations Commission at Lansing, on Friday, August 11, 1995

SIGNIFICANT MERC AND COURT DECISIONS ISSUED IN THE SECOND & THIRD QUARTER OF 1998

by David Peltz

Significant Court Orders and Opinions

Residual Unit of All Unrepresented Nonsupervisory Support Staff Share a Community of Interest

Alpena Community College -and- Michigan Education Association

MERC Case No. R93 I-179, 1994 Mich Lab Op 955
Unpublished opinion per curiam of the Court of Appeals, issued November 8, 1996 (Docket No. 180695)
Supreme Court Docket No. 107926, ___ Mich ___ (1998)

The Supreme Court, disagreeing with the Court of Appeals, reinstated MERC's decision directing an election among a large residual unit of unrepresented nonsupervisory support staff employed by Alpena Community College. Petitioner Michigan Education Association (MEA) had sought to accrete these employees to its existing unit of clerical employees.

Although not all employees in the proposed unit had similar duties, skills or educational qualifications, the Commission found that there were sufficient similarities among individual positions to establish a community of interest. The Court of Appeals reversed the election order in a 2-1 decision. In its majority opinion, the Court of Appeals held that the employees sought to be accreted to the clerical support unit were "simply too diverse" to be considered to have a community of interest. Writing in dissent, Judge White wrote that MERC's determination was appropriate because it avoided the proliferation of bargaining units.

The Supreme Court first noted that decisions of the Commission regarding residual bargaining units are to be given substantial deference under the competent, material and substantial evidence standard. In addition, the Court noted that the gathering up of employees who remain after the formation of other, better defined units will nearly always involve joining employees with diverse job descriptions. In consideration of those principles, the Court agreed with Judge White that MERC's decision in this case was sound. While the residual group in question contained persons with varying responsibilities and compensation levels, the Court found that neither the statutory purposes nor the goals of collective bargaining would be frustrated by the formation of the unit approved by the Commission.

Duty to Bargain over Changes in Health Benefits/Agency Status under PERA

St. Clair Intermediate School District -and- Intermediate Education Association and Michigan Education Association -and- Michigan Education Special Services Association

MERC Case No. CU90 H-33, 1993 MERC Lab Op 101 and 1994 MERC Lab Op 1167
Court of Appeals Docket No. 161643 & 161645, 218 Mich App 734 (1996)
Supreme Court Docket Nos. 107479 & 107480, ___ Mich ___ (1998)

In this case, the Supreme Court affirmed MERC's finding that the Michigan Education Association (MEA) and the Michigan Educational Special Services Association (MESSA) violated PERA by unilaterally implementing a midterm modification of the collective bargaining agreement. The MESSA is a nonprofit corporation whose purpose is to provide insurance benefits to its members. The MEA is the authorized collective bargaining agent for teachers employed by the St. Clair School District. MESSA health coverage for at least some employees has been included in the contract between the MEA and the school district since approximately 1967. In 1990, the MESSA decided to increase the initial $1,000,000 lifetime maximum health insurance benefit to a $2,000,000 coverage cap. Upon learning of the change, the employer filed an unfair labor practice charge alleging that both the MESSA and the MEA violated the bargaining obligation set forth in § 10(3)(c) of PERA. MERC determined that the respondents implemented an improper unilateral change in the parties' collective bargaining agreement, that the charging party did not waive its right to bargain with respect to the modification, and that the MESSA acted as an agent of the MEA when it implemented the change. The Court of Appeals affirmed MERC's decision and the Supreme Court granted leave to appeal.

Relying on common law agency principles focusing on the relations of the parties and the degree of control exercised by the principal, the Supreme Court affirmed MERC's determination that more than a "mere" agency relationship exists between the MESSA and the MEA. This conclusion was based on the following factors: (1) the MEA and the MESSA were bound by a formal affiliation and common agreement; (2) under the MESSA bylaws, MEA members had majority control of the MESSA board that made the decision to increase the benefit level; (3) the MESSA had substantial input into the collective bargaining process and

had an agreement with the MEA to keep it involved and informed concerning the marketing of its products to MEA members; and (4) the MEA controlled both the MESSA membership and access to MESSA benefits. The Court also agreed with MERC's finding that the MEA had a duty to provide the employer with notice and an opportunity to bargain before making changes in the existing level of benefits and that the school district neither waived its right to renegotiate modification of the term nor extended to the MESSA the right to unilaterally make benefit changes to the insurance coverage specified in the contract. Finally, the Court rejected the respondents' assertion that no PERA violation occurred because any increase in health care premiums during the life of the contract over and above the costs agreed upon were at "no cost" to the employer. According to the Court, the fact that the change did not impose a financial cost upon the employer did not justify unilateral modification of conflicting contract language.

Justice Kelly, joined by Justice Cavanagh, dissenting, stated that the no agency relationship existed between the two entities because the MEA lacked the ability to control the actions of the MESSA.

Other Court Orders

Jackson Fire Fighters Association, Local 1306, IAFF, AFL-CIO -and- City of Jackson
MERC Case No. CU94 F-32, 1996 Mich Lab Op 125
Court of Appeals Docket Nos. 192470, 193765, 197794 & 197795
Supreme Court Docket Nos. 111509-10, 111511 & 111512
Order Denying Application for Leave to Appeal (6/16/98)

Detroit Board of Education -and- Organization of School Administrators and Supervisors, AFSA, AFL-CIO
MERC Case No. C94 C-58, 1996 Mich Lab Op 30 & 1996 Mich Lab Op 207
Court of Appeals Docket No. 192852
Order Denying Motion for Rehearing (6/25/98)

Kevin J. Reid v City of Flint and Flint Fire Fighters Union
Case Nos. C92 D-106 & CU93 D-40, 1994 MERC Lab Op 219
Court of Appeals Docket No. 173831
Order Denying Motion for Reconsideration (6/29/98)

Wexford County, Board of Public Works (Landfill Division) -and- International Union of Operating Engineers (IUOE), Local 324, AFL-CIO -and- Kandie R. Kelley
MERC Case Nos. C96 D-88, C96 D-89 & R96 C-33
Court of Appeals Docket No. 213105
Order Granting Motion for Immediate Consideration, Denying Motion for Partial Enforcement

Significant Commission Decisions

Right of Access to Workplace by Non-Employee Union Representative
Michigan State University -and- Fraternal Order of Police, Capitol City Lodge No. 141
MERC Case No. C96 L-299, issued April 7, 1998

Reversing the finding of its Administrative Law Judge (ALJ), MERC held that an employer violated Section 9 of PERA by refusing to permit a union president who had been terminated from his employment access to its building. Charging Party Lodge 141 represented a bargaining unit consisting of police officers employed by Michigan State University. Officer George Plummer was elected president of the union in 1995. At that time, union meetings were regularly held at the MSU police building. In addition, the building housed a filing cabinet containing union records and a bulletin board which Plummer was responsible for updating. In December of 1996, Plummer was fired for disciplinary reasons. Although he continued to serve as union president after his discharge, Plummer was denied access to the employee section of the police building. At the same time, the University allowed charging party's executive director, who was not its employee, to attend union meetings in this section of the building. MERC held that although an employer may promulgate reasonable rules regarding the use of its facilities by bargaining members and their representatives, those measures must be reasonable and fairly applied. By refusing to allow Plummer on its premises while allowing another non-employee union representative to conduct union business in the building, the employer effectively interfered with the right of its employees to designate their own bargaining representative.

Repudiation of Promise to Discuss Work Rule Modifications
City of Ecorse -and- International Association of Fire Fighters, Local 1990, AFL-CIO
MERC Case No. C96 K-257, issued May 14, 1998

Adopting the recommendation of its ALJ, MERC held that the employer violated its duty to bargain in good faith by repudiating a promise made outside the collective bargaining agreement to allow the union to review and

discuss work rules prior to their issuance. The union had filed a previous unfair labor practice charge challenging the issuance of new work rules and regulations governing members of the bargaining unit. The hearing in that case was adjourned when the employer promised to hold the revised rules in abeyance and confer with the union regarding the changes. The union then wrote to the fire chief and suggested a series of work study sessions to discuss the revisions. Instead of responding directly to the union's proposal, the chief posted a memo on the fire department bulletin board soliciting the participation of departmental personnel on a committee to discuss the issue. Shortly thereafter, the chief notified the union that the revised rules and regulationd would be issued soon, and that union representatives would have a chance to provide input before they were issued. At that point, the union withdrew its unfair labor practice charge. Although the union made several attempts to meet with the chief regarding the work rule revisions, no formal meetings were ever scheduled. The new rules were issued by the chief and adopted by the mayor and city council without the union's input. The union then filed another charge.

In concluding that the employer was bound by its promise to discuss the new work rules with the union before issuing them, MERC rejected the employer's contention that any dispute concerning whether the fire department satisfied its agreement to discuss the work rules was a matter of contractual interpretation which should be left to the grievance arbitration procedure. According to MERC, there was no bona fide dispute over interpretation of the contact because the employer did not "discuss" the issue of work rules within any reasonable definition of the term, nor did the fire department abide by its promise to give the union an opportunity to review the rules prior to their issuance. The Commission also questioned whether the dispute would even be subject to the grievance arbitration procedure, since it involved the repudiation of a promise outside the collective bargaining agreement. MERC disagreed, however, with the ALJ's finding that the employer engaged in direct dealing with employees by posting the memo seeking employee participation on a committee to review the rules. There was no evidence that such a committee was ever formed, or that the chief actually received any input from the employees. The only member of the bargaining unit who the record indicated had been shown the rules prior to their issuance was a captain. This captain was consulted because he was a senior command officer, not because he was a member of the bargaining unit.

Employer May Require Union Officer to Submit to Questioning Regarding a Pending Grievance

Ingham County, Board of Commissioners, and Ingham County Sheriff -and- Capitol City Lodge 141, Fraternal Order of Police (FOP), Labor Program, Inc., Ingham County Sheriff's Dep't Nonsupervisory Div.
MERC Case No. C96 L-298, issued May 14, 1998

MERC affirmed its ALJ's decision dismissing a charge alleging that the employer violated Section 10(1)(a) of PERA by requiring the union president to attend a meeting with the employer's attorney and to answer questions concerning a pending grievance without the presence of counsel. On June 5, 1996, Union president Robert Humphrey attended a meeting at which two bargaining unit members were placed on paid administrative leave by the Ingham County undersheriff. Thereafter, one of the employees filed a grievance challenging the authority of the undersheriff to take such action. The grievance was signed by Humphrey, and it identified the union president as a witness to a statement allegedly made by the undersheriff at the June 5 meeting. Ultimately, the employer denied the grievance and the union filed for arbitration. Shortly before the arbitration hearing, the undersheriff ordered Humphrey to attend a meeting to discuss the grievance. Humphrey was told that the purpose of the meeting was to prepare for the upcoming arbitration, and that he would not need an attorney present. At this meeting, Humphrey was questioned regarding the statement attributed to the undersheriff and about his role in signing the grievance. MERC held that absent an independent PERA violation, any employee, including a union officer, may be compelled to meet with his or her employer and answer questions without the benefit of union representation. An employee is entitled to counsel only if he or she reasonably believes the interview could result in disciplinary action. In the instant case, there was no dispute that Humphrey understood the meeting was not disciplinary in nature. To the extent that the employer asked Humphrey to comment on the pending grievance, the Commission found that such questions could not have caused him to feel threatened or coerced given his position as union president. MERC rejected charging party's reliance on *Northwest Public Schools*, 1986 MERC Lab Op 590. In that case, the Commission held that a school district had interfered with public employees in the exercise of their Section 9 rights when it interviewed bargaining unit members in preparation for an unfair labor practice hearing concerning statements made by union officers at a union ratification meeting. MERC found the instant case distinguishable based on the fact that the questions asked of Humphrey did not concern the internal workings of the union.

Separate Bargaining History Insufficient to Overcome Presumption that Unit of All County Employees is Appropriate

County of Calhoun (Juvenile Home) -and- Governmental Employees Labor Council
MERC Case No. R97 F-104, issued May 14, 1998

The Governmental Employees Labor Council filed a petition seeking to represent a bargaining unit consisting of all full-time and regular part-time employees working at the Calhoun County Juvenile Home. Petitioner also represented a broad unit of full-time and regular part-time nonsupervisory employees of Calhoun County. At the time the petition was filed, the employees covered by the petition were all employees of the Calhoun County Probate Court. Although they were not represented by any union at that time, the employees had been represented in a separate unit of Juvenile Home employees while they were employees of the Probate Court. During the pendency of the petition, Calhoun County became their sole employer. The Petitioner asserted that the Juvenile Home employees did not share a community of interest with its existing unit of County employees, and sought an election in a separate bargaining unit consisting only of Juvenile Home employees. The Commission disagreed, and directed an election to determine whether the child care workers, senior child care workers, cooks, clerical employees, the building and maintenance supervisor and the activities and recreation coordinator wished to become part of the existing unit represented by the Petitioner. In order to maximize the size of the bargaining unit and avoid the formation of fragmented units, MERC said, it has consistently held that a unit which includes all nonprofessional, nonsupervisory employees is the presumptively appropriate unit for county employees. Although a separate bargaining history may overcome the presumption, the bargaining history in this case occurred at a time when the Juvenile Home employees were employees of a different employer, the Probate Court. Since the employer was now Calhoun County, the Commission concluded that the bargaining history was not sufficient to justify a separate unit of County employees employed at the Juvenile Home. MERC determined, however, that the shift supervisors, team leaders, assistant team leaders, food service manager, and administrative assistant employed at the Juvenile Home were all supervisors under PERA and, thus, should be prohibited from taking part in the election.

On-Call Substitute Bus Drivers Found to be Casual Employees

Coldwater Community Schools -and- Coldwater Educational Support Personnel Association
MERC Case No. UC97 G-33, issued August 11, 1998

The employer filed a petition seeking to remove substitute bus drivers from a unit which included all bus drivers, bus maintenance employees, paraprofessionals, secretaries, and clerk-typists employed by the school district. The employer asserted that its substitute bus drivers were casual employees under PERA. Relying on prior cases involving the status of substitute teachers, the Commission agreed with the employer and granted the petition. MERC examined factors relating to the "the continuity and expectancy of permanent and/or regularly scheduled ongoing employment." In this case, the substitute drivers worked on call. Their assignments were short and of irregular duration. The substitute drivers did not commit to work from one day to the next, although they might be removed from the list if they did not agree to work enough to meet the employer's needs. During the 1996-1997 school year, most of the substitute drivers worked substantially fewer hours than the regularly scheduled drivers. Moreover, the substitute drivers who worked during that period had worked for the employer an average of only two years. In fact, as many substitutes left the employer's employment from 1996-1998 as continued working as substitutes. Based on these factors, the Commission concluded that the substitute bus drivers in question were casual employees under the Act. In so holding, MERC distinguished this case from *Southfield Public Schools*, 1984 MERC Lab Op 162, aff'd 148 Mich App 714 (1985), in which a group of substitute custodians who worked on-call were found to be regular employees because they were called virtually every day, and because they had essentially committed themselves to working every day.

Failure to Comply with Request for Letters Pertaining to Demoted Employee

Plymouth-Canton Community Schools -and- Plymouth-Canton Administrators Association
MERC Case No. C97 E-109, issued September 16, 1998

The Commission agreed with the ALJ that the employer had a duty under PERA to provide the union with unredacted copies of all letters from parents, staff members, and students regarding a demoted principal, and to bargain with the union regarding the cost of providing these documents. Following the principal's disciplinary demotion, the union requested copies of all letters sent to the employer during the 1995-1996 school year which pertained to him. More than two months later, the employer provided the union with redacted copies of letters from students and parents and assessed a charge of $25.58 for the documents. In addition, the employer offered to

copy the principal's personnel file for an unspecified fee. The employer refused to provide the union with copies of the letters from staff members on the ground that such information was exempt under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*.; MSA 4.1801(1) *et seq*.

MERC affirmed the ALJ's finding that the employer breached its duty to bargain in good faith because the withheld information was relevant to two potential grievances pertaining to the demotion. Because the principal was a member of the bargaining unit represented by the union, the information was presumptively relevant. MERC held that the employer waived any issue of confidentiality. The employer made no attempt to put evidence into the record to substantiate its later assertion that the letters pertained to an investigation into allegations of sexual harassment. Similarly, the employer waived any argument relating to the *Family Education Rights and Privacy Act* (FERPA), 20 USC 1232g. The employer did not rely upon FERPA as justification for failing to comply with the information until after the issuance of the ALJ's decision and recommended order, and the exceptions failed to cite any relevant authority regarding the applicability of the Act to these facts. MERC also rejected the employer's reliance on the *Bullard-Plawecki Employee Right to Know Act*, MCL 423.501 *et seq.*; MSA 17.62(1). Although the letters were not part of the principal's personnel file, *Bullard-Plawecki* does not preclude an employer from taking disciplinary action against an employee on the basis of such information. Rather, the Act merely prohibits the use of information improperly excluded from an employee's personnel file in "judicial or quasi-judicial proceedings," and even then, only if the judge or hearing officer makes the determination that the information was intentionally excluded from the personnel record and the employee objects or is not given a reasonable time to review the information. Finally, the Commission agreed with the ALJ that the employer violated PERA by unilaterally calculating the costs of copying and compiling the letters. Although the employer allegedly set the fees in accordance with the provisions of FERPA, *Bullard-Plawecki* and the FOIA, these other statutes are irrelevant. The information request at issue in this case was made pursuant to PERA, which is the dominant law regulating public employee labor relations

No Duty to Bargain Over Limitation on Overload Hours

Grand Rapids Community College -and- Grand Rapids Community College Faculty Association

MERC Case Nos. C96 A-21 & C96 F-143, issued September 16, 1998

MERC held that overload hours (hours voluntarily assumed by a faculty member during a given semester in addition to his or her normal teaching load and for which the faculty member is paid over and above his salary) are in the nature of overtime work. Therefore, the employer had no duty to bargain regarding the curtailment of those hours. The union filed unfair labor practice charges after the employer announced that each faculty member would be limited to a maximum of 30 overload hours per semester. MERC held that whether the issue is cast in terms of a limitation on the number of hours of overload available to the bargaining unit in the aggregate, or as a restriction on the number of overload hours each individual faculty member may work, the decision falls within the "core of entrepreneurial control," and is a permissive subject of bargaining. The Commission also rejected the union's contention that the employer violated PERA by unilaterally changing a term or condition of employment while the parties were actively engaged in fact finding and mediation. Upon expiration of the contract, the employer is free to unilaterally change permissive terms and conditions of employment, although the effects of the changes may be subject to bargaining.

Late Arrival of Observer Not Valid Basis for Objection to Election

Brighton Area Schools -and- International Union of Operating Engineers, Local 547 -and- Michigan Education Association

MERC Case No. R98 C-43, issued September 16, 1998

The Michigan Education Association (MEA) won an election to accrete an existing unit represented by the International Union of Operating Engineers, Local 547 to an existing unit represented by the Brighton Educational Support Personnel Association, an affiliate of the MEA. The incumbent objected to the election on the ground that an MEA representative was allowed into the polls as an observer two hours after the voting had started. The incumbent argued that the presence of the MEA representative in the polling area during the polling period was *per se* disruptive and that the election officer gave the appearance of partiality by allowing the representative to act as an observer despite the fact that she arrived so late. MERC concluded that the objection was without merit. There was no evidence that the arrival of the representative prevented or discouraged any voter from voting, nor was it reasonable to assume that any voter inferred bias on the part of the election officer from the fact that the representative was permitted to act as an observer for the rest of the election. In fact, the petitioner might have had grounds for filing objections had the election officer turned the representative away.

Other MERC Opinions

City of Detroit, Department of Transportation -and- Council 25, American Federation of State, County and Municipal Employees, Local 312
MERC Case No. C94 K-297, issued April 7, 1998

To be eligible for federal funds, the employer was required by the Federal Transit Authority (FTA) to randomly test employees in positions deemed safety sensitive for drugs and/or alcohol. After implementation of the program, the union filed a charge alleging that the employer violated its bargaining obligation under PERA by failing to comply with a request to disclose the names of those individuals who had been tested. On exception, the employer asserted that the list of names was not relevant to the union's bargaining and representational responsibilities because the drug testing program was mandated by federal law. MERC held the employer waived consideration of this issue by failing to raise it before the ALJ. In dicta, however, the Commission indicated that the employer had a duty to supply the requested information because the list of tested unit members was relevant to the union's responsibilities as bargaining agent. MERC also rejected the employer's contention that disclosure of the information would violate the FTA. Pursuant to Section 653.75(a) of the FTA, information pertaining to a tested employee is confidential "[e]xcept as required by law." In the instant case, disclosure was required by law; i.e. by PERA's mandate than an employer has a duty to supply requested information which the union needs to carry out its statutory duties.

Ferris State University, Board of Trustees -and- Ferris Faculty Association, MEA/NEA
MERC Case Nos. C95 G-148, CU96 B-10 & C97 H-187, issued April 13, 1998

In Case Nos. C96 G-148 and CU96 B-10, the ALJ found that the union had engaged in surface bargaining and bypassed the employer's designated bargaining representative. After exceptions and cross-exceptions were filed, but before the issuance of a decision by the Commission, the parties settled the dispute. Pursuant to the parties' agreement, MERC modified the ALJ's remedial notice but otherwise adopted the ALJ's Decision and Recommended Order. The Commission also granted the union's motion to withdraw the charge in Case No. C97 H-187.

Hurley Medical Center -and- RN's and RPH's of Hurley Medical Center -and- Velma White
MERC Case Nos. C97 F-136 & CU97 F-22, issued April 13, 1998

The ALJ found that the charging party failed to establish good cause for an adjournment and dismissed the charges where neither the charging party nor her attorney notified the ALJ, the respondent employer or the respondent union of their unavailability until the date upon which the hearing was scheduled. No exceptions were filed to the ALJ's decision.

Grand Rapids Community College -and- Grand Rapids Community College Faculty Association
MERC Case Nos. C96 F-141 & C96 F-144, issued April 14, 1998

The ALJ dismissed a charge alleging that the employer unilaterally eliminated "released time" for faculty members in the bargaining unit. According to the ALJ, the record clearly established that released time duties have never been considered bargaining unit work, nor have these assignments ever been subject to collective bargaining. The parties have always treated released time as a voluntary nonteaching activity undertaken by employees in lieu of their normal duties, but which did not affect their normal unit or job placement, seniority, pay or benefits. Over the years, the employer has freely changed the duties, hours and other working conditions connected with released time without bargaining with the union or anyone else, and the acceptance of released time duties has never been a term or condition of employment as a faculty member. No exceptions were filed to the ALJ's decision.

Wayne County Juvenile Detention Facility -and- Rollin Fells
MERC Case No. C98 B-22, issued April 14, 1998

The ALJ recommended dismissal of the charge when, in response to an order to show cause, the charging party failed to indicate how the employer's failure to reinstate him to his former position stated a claim for relief under PERA. No exceptions were filed to the ALJ's decision.

Frenchtown Charter Township -and- International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW
MERC Case No. C95 L-251, issued April 22, 1998

In a prior order, the Commission denied the employer's motion for retroactive extension of time to file exceptions to the ALJ's Decision and Recommended Order. On

motion for reconsideration of that decision, MERC held that good cause did not exist for permitting the late filing. More than three months had elapsed since the issuance of the ALJ's decision. During the that time, the employer requested and was granted two extensions of time in which to file its exceptions. Despite that fact, the employer was unable submit its exceptions in a timely manner. Furthermore, the employer made no attempt to justify the late filing in its initial motion to receive the untimely exceptions. Instead, the employer merely reiterated the reasons for seeking the two prior extensions.

City of Ferndale -and- Police Officers Association of Michigan
Case No. C97 B-54, issued April 22, 1998

The ALJ concluded that statements made by a supervisor did not rise to the level of a threat which would discourage employees from utilizing the grievance procedure or engaging in protected activity. No exceptions were filed to the ALJ's decision.

Wayne County Community College Board of Trustees -and- Wayne County Community College Federation of Teachers, AFT Local 2000 -and- Barbara R. Weems
MERC Case Nos. C97 A-10 & CU97 A-1, issued April 22, 1998

The ALJ dismissed a charge alleging that the union breached its duty of fair representation by withdrawing the charging party's grievance without her knowledge or approval, and by failing to notify her of its actions until several months later. The union elected not to proceed with the grievance after reviewing the matter with its negotiators, executive board and attorney. The ALJ found nothing in the record to suggest that this was anything other than a reasoned, good faith, nondiscriminatory decision. While noting that the union should have taken greater care in notifying the charging party of the status of her grievance, the ALJ determined that she suffered no loss as a result of the delay in notification. The ALJ also dismissed a charge against the employer on the ground that it failed to allege a PERA violation. No exceptions were filed to the ALJ's decision.

School District of the City of Highland Park -and- American Federation of State, County and Municipal Employees, Council 25 and Local 1416
MERC Case No. C97 D-86, issued April 27, 1998

The ALJ concluded that the employer did not repudiate the contract or its collective bargaining obligations when it reduced the number of days in the sick leave banks of five bargaining unit members. According to the ALJ, the dispute constituted a bona fide disagreement over interpretation of the contract which should be resolved through the grievance procedure. No exceptions were filed to the ALJ's decision.

Charter Township of Clinton and Clinton Township Housing Commission -and- International Union UAW and UAW Local 412
MERC Case Nos. C96 L-297 & UC97 E-24, issued May 20, 1998

The ALJ recommended dismissal of unfair labor practice charges and a unit clarification petition filed by the union concerning the bargaining status of a clerical position in the Housing Commission. Both the charges and the petition required a determination of whether the Housing Commission or the Township was the employer of the Housing Commission clerk. The ALJ examined the evidence in light of the enabling legislation and the applicable local ordinances and concluded the Housing Commission had sufficient autonomy to constitute a separate employer under PERA. Therefore, the position at issue was not properly included in a bargaining unit of Township employees. No exceptions were filed to the ALJ's decision.

Macomb County and Macomb County Civil Service Commission -and- Police Officers Labor Council
MERC Case No. C97 F-133, issued May 27, 1998

The ALJ recommended dismissal of an unfair labor practice charge alleging that the employer, Macomb County, through its Civil Service Commission, violated PERA by unilaterally modifying the promotional exam for sheriffs in the bargaining unit to include both written and oral portions. Although the civil service commission had exercised its authority to promote employees in the sheriff department by competitive oral and/or written examination for at least twenty years, the union made no attempt to negotiate contract provisions regarding promotional criteria during that time. In addition, the expired contract contained a management rights clause which reserved to Macomb County the right to promote. The ALJ concluded that the past practice, coupled with the management right clause, constituted a waiver of the union's right to bargain over promotions. Even if such a waiver did not occur, the ALJ held that dismissal was proper because the union failed to properly demand bargaining over the issue of promotions. No exceptions were filed to the ALJ's decision.

City of Detroit (Buildings and Safety Engineering) -and- American Federation of State, County and Municipal Employees (AFSCME), Local 1227 -and- Hassan Aleem
MERC Case Nos. C97 C-62 & CU97 C-7, issued May 28, 1998

The charging party filed exceptions challenging the ALJ's finding that the charges failed to allege any violation of PERA by either the respondent union or the respondent employer. MERC found that the exceptions failed to comply with Rule 66, R423.466 of the General Rules of the Employment Relations Commission. According to the Commission, the exceptions essentially reiterated the arguments which the charging party made to the ALJ and, in a conclusory fashion, asserted that the ALJ's decision was erroneous. Although the exceptions contained various citations of authority, MERC found the charging party failed explain how these citations were relevant or why the justified a decision in his favor. The Commission also rejected the charging party's assertion that he suffered prejudice as a result of the ALJ's decision to mail a copy of the charges to the Greater Detroit Building Trade Counsel (GDBTC). The ALJ took such action merely because reference was made to that organization in the original charge. (Note: MERC denied the charging party's Motion for Reconsideration in an order issued on July 2, 1998.)

County of Washtenaw (Prosecutor's Office) -and- Washtenaw County Assistant Prosecutors Association (WCAPA)
MERC Case No. C97 B-49, issued May 28, 1998

The ALJ dismissed an unfair labor practice charge alleging that the employer violated PERA by implementing unilateral changes in the terms and conditions of employment of bargaining unit members absent a bona fide impasse in negotiations. Specifically, the charge involved the passage by the County Board of Commissioners of a resolution and ordinance to amend the Washtenaw County Employees Retirement System (WCERS), a defined benefit retirement plan, by transferring administration of the plan from the office of the County Clerk to that of the County Administrator. Although the composition and responsibilities of the policy-making commission or board that administers a retirement program are mandatory subjects of bargaining, the ALJ concluded that the change which occurred in this case did not give rise to a duty to bargain. The change merely involved the moving of benefits administration from one County office to another and had no substantive effect on the retirement plan itself or the body ultimately responsible for administration of the plan, the retirement commission. No exceptions were filed to the ALJ's decision.

City of Oak Park (Public Safety Department) -and- Police Officers Association of Michigan (POAM)
MERC Case No. C97 E-105, issued June 16, 1998

The union filed an unfair labor practice charge after the employer modified the retirement system to provide for the forfeiture of pension benefits in the event an employee was convicted of a felony arising out of his or her employment. The ALJ concluded that the employer violated PERA by unilaterally imposing a change in pension benefits without first giving the union sufficient advance notice and an opportunity to bargain regarding the change. In so holding, the ALJ rejected the employer's contention that this was a purely contractual dispute which should be resolved through the contractual grievance procedure. There was nothing in the contract covering the forfeiture of pension benefits. No exceptions were filed to the ALJ's decision.

Memphis Community Schools -and- Memphis Education Association
MERC Case No. C97 I-191, issued June 16, 1998

The ALJ concluded that the employer did not violate PERA when it unilaterally implemented its "last best" offer. At the time the employer announced the implementation of salary increases without retroactive pay, the parties were at impasse. Therefore, the employer was free to implement any changes "reasonably comprehended" within its pre-impasse proposals. Since the employer neither proposed retroactivity and nor agreed to it in response to the union's proposal, the employer did not violate its obligation to bargain in good faith. No exceptions were filed to the ALJ's decision.

Grand Rapids Community College -and- Grand Rapids Community College Faculty Association
MERC Case No. C97 D-76, issued June 18, 1998

The ALJ recommended dismissal of a charge alleging that the employer canceled a course scheduled to be taught by a regular full-time faculty member in retaliation for the filing of a grievance by that employee over her pay for the course. The ALJ found no evidence in the record to support a finding of illegal motivation. Crediting the testimony of the dean who made the decision, the ALJ determined that the cancellation had to do with the academic integrity of the course relative to the number of hours of laboratory instruction it provided to the students. No exceptions were filed to the ALJ's decision.

City of Ecorse -and- International Association of Fire Fighters, Local 1990, AFL-CIO
MERC Case No. C96 K-263, issued June 22, 1998

The ALJ recommended dismissal of a charge alleging that the employer violated PERA by unilaterally eliminating its requirement that an officer must be present on every fire-truck/pumper leaving the fire station to respond to an emergency call. The union presented no evidence to establish that dispatching pumpers to emergency scenes without an officer created a genuine or significant impact on safety. The ALJ found that apparatus staffing is a permissive bargaining subject, and that the employer did not violate its bargaining obligation by making the change. No exceptions were filed to the ALJ's decision.

Lansing School District -and- Wendell W. Phillips
MERC Case No. C98 C-47, issued June 24, 1998

After the charging party failed to respond to the employer's motion for bill of particulars, the ALJ recommended dismissal of the charge. The ALJ found that the charge failed to state a claim upon which relief could be granted under PERA and failed to comply with Rule 52, R423.452 of the General Rules of the Employment Relations Commission which requires that a charge include a clear and complete statement of facts supporting the alleged unfair labor practice. No exceptions were filed to the ALJ's decision.

St. Joseph County District Court -and- St. Joseph County District Court Employees' Association
MERC Case No. C97 E-95

The ALJ dismissed a charge alleging that the employer violated its bargaining obligation by designating the county administrator as its negotiator. Even prior to recent court reform legislation, the Commission had held that nothing in PERA prohibits a court from delegating its bargaining responsibilities to its funding entity. This is even more appropriate now that the County is a co-employer pursuant to the statutory amendments. The ALJ also found no evidence in the record to establish that the employer refused to bargain independently with the union or that it threatened to impose its last offer without reaching impasse. Finally, the ALJ concluded the union had failed to establish that the employer discriminated against bargaining team members. No exceptions were filed to the ALJ's decision.

North Central Community Mental Health Services -and- American Federation of State, County, and Municipal Employees (AFSCME)
MERC Case No. C96 B-29, issued July 10, 1998

MERC affirmed its ALJ's holding that the union failed to establish, either directly or indirectly, that the discharge of an employee was motivated by anti-union animus or hostility toward her protected activity. The employee, a residential care aide, was terminated based upon allegations of client abuse and neglect. The record established that the employee was engaged in protected activity, and that the employer was aware of this activity. However, MERC held that the ALJ was correct in finding that the union had failed to establish a prima facie case of unlawful discharge.

Government Administrators Association -and- Charles K. Glossenger
MERC Case No. CU97 L-47, issued July 29, 1998

The ALJ recommended dismissal of an unfair labor practice charge alleging that the union violated its duty of fair representation toward the charging party and other "special duty" nurses employed by Wayne County when it negotiated a wage increase for regular nurses but not for the special duty nurses. The ALJ found nothing in the record to suggest that the union was motivated by racial or other individual prejudice or personal dislike in failing to seek a wage increase for special duty nurses. Rather, the union made a reasoned decision that it was in the best interest of the bargaining unit as a whole to make regular duty employment more desirable by decreasing the existing salary gap between regular and special duty nurses. The ALJ found no evidence that the union violated its duty of fair representation with regard to the actions it took to inform the special duty nurses about the terms of the agreement prior to ratification. No exceptions were filed to the ALJ's decision.

City of Saginaw (Police Dep't) -and- Police Officers Association of Michigan (POAM)
MERC Case No. C97 F-139, issued July 30, 1998

The ALJ determined that the employer did not violate PERA by failing to provide the union with notice of its intent to impose a performance improvement plan (PIP) upon a bargaining unit member. Absent contractual commitments to the contrary, such plans are part and parcel of an employer's everyday right and duty to manage its workforce. Unless there has been a substantial deviation by an employer from normal operating procedures, such daily management decisions are not considered to be unilateral changes which require prior bargaining. In this case, the PIP did not differ in any substantial way from previous PIP's. The ALJ also found

no evidence that the employee was discriminated against because of his activities on behalf of the union. No exceptions were filed to the ALJ's decision.

Detroit Board of Education -and- Detroit Federation of Teachers -and- Sheila Knubbe
MERC Case Nos. C97 I-204 & CU97 I-34

Without a hearing, the ALJ recommended dismissal of unfair labor practice charges filed against the Detroit Board of Education and the Detroit Federation of Teachers. The ALJ held that a finding by the Teacher Tenure Commission that the charging party had been discharged for just cause was a complete defense to the charging party's assertion that the union breached its duty of fair representation. With regard to the employer, the ALJ held that the charge failed to state a claim upon which relief could be granted under PERA. On exception, the Commission remanded the case to the ALJ to give the charging party an opportunity to file an amended charge setting forth the factual basis for her contention that the employer retaliated against her for exercising her right to file a grievance, and clarifying whether the fair representation claim pertained to the alleged act or acts of retaliation by the employer.

West Shore Hospital -and- Nurses for Nurses Association -and- Service Employees International Union, Local 79, AFL-CIO
MERC Case No. R98 D-56, issued August 11, 1998

Nurses for Nurses Association filed a petition seeking to represent an existing bargaining unit of registered nurses. At the hearing, the incumbent indicated that it objected to an election because it had information that the petitioner had obtained its showing of interest through fraud and misrepresentation. The ALJ informed the incumbent that it could not litigate that issue within the context of a representation case. No other issues were raised at the hearing. MERC found that a question concerning representation existed and directed an election.

Saginaw Township Community Schools -and- Michigan Education Association
MERC Case No. R98 B-15, issued August 11, 1998

The Michigan Education Association filed a petition seeking an election to accrete teachers and counselors employed at the Mackinaw Academy, an alternative high school and junior high school, to its existing unit of teachers employed by the Saginaw Township Community Schools. MERC granted the petition and directed an election on the grounds that a unit of all certified and non-certified teachers in a public school district is presumptively appropriate. The fact that the academy teachers have different job duties than K-12 teachers and employ unusual methods of instruction was insufficient to rebut the presumption in this case. Like their counterparts in the K-12 program, the academy teachers prepare lesson plans, grade assignments and tests, assign and report final grades, confer with parents, provide one-on-one instruction, follow the progress of students, prepare individualized assignments and grade papers.

Roscommon County, Mini-Bus System -and- International Chemical Workers Union Council, UFCW
MERC Case No. C97 C-66, issued August 20, 1998

The ALJ recommended dismissal of an unfair labor practice charge alleging that the employer singled out for discipline two bus driver employees who were outspoken advocates for the union. The union alleged that the discipline of the two employees violated a long-standing past practice of allowing employees to take off work when road conditions were hazardous. Although such a practice may have existed at some time, the ALJ determined that it had been abolished several months before the two employees were disciplined. The fact that a part-time driver was not disciplined for taking time off was fully explained on the record and does not establish disparate treatment. No exceptions were filed to the ALJ's decision.

City of Detroit (Department of Transportation) -and- Amalgamated Transit Union, Local 26 -and- ATC/VANCOM
MERC Case No. C98 B-25, issued August 31, 1998

The ALJ concluded that the employer did not violate its duty to bargain with the union by entering into a subcontract with ATC/Vancom, a private contractor, to provide public transportation services to elderly and disabled citizens. The employer had no duty to bargain over the decision because this work had not previously been performed exclusively by members of the charging party's unit. The fact that the parties discussed using bargaining unit members to provide the services, both at the bargaining table and in separate discussions with the director of the employer's Department of Transportation, did not convert this topic from a permissive to a mandatory subject of bargaining. The ALJ rejected the charging party's argument that a letter from the director to the union obligated the employer to bargain over the services. The letter did not constitute a binding contract because the director had no authority to enter into such an agreement with the union. Moreover, the employer had complied with

any promises made by the director in the letter. No exceptions were filed to the ALJ's decision.

Central Michigan University -and- American Federation of State, County and Municipal Employees, Council 25 and Local 1568
MERC Case No. C96 I-211, issued September 1, 1998

The ALJ recommended dismissal of a charge alleging that the employer failed to bargain in good faith by unilaterally announcing that the union's bargaining teams would not be paid for negotiations. Although contractually provided union release time which compensates union representatives for time spent pursuing union activities constitutes a mandatory subject of bargaining, the charging party failed to demand bargaining after the employer announced its intention to discontinue the practice of paying union negotiators. Instead, charging party suggested after-hours bargaining so negotiators would not suffer a pay loss, and opined that the employer was committing an unfair labor practice by unilaterally changing a mutually acceptable past practice without bargaining. A mere statement that an issue is negotiable, or even a protest of an employer's action, does not constitute a demand to bargain. No exceptions were filed to the ALJ's decision.

City of Wyandotte Department of Municipal Services -and- Michael C. Zielman
MERC Case No. C98 D-81, issued September 1, 1998

The ALJ recommended dismissal after the charging party failed to respond to an order to show cause. The ALJ concluded that the allegations set forth in the charge were either untimely under PERA or that they failed to state a claim upon which relief could be granted. No exceptions were filed to the ALJ's decision.

City of Oak Park -and- Police Officers Association of Michigan (POAM)
MERC Case No. C97 H-179, issued September 11, 1998

The ALJ concluded that the employer did not violate its bargaining obligation under PERA by implementing a plan to utilize senior citizen volunteers to issue citations for minor parking offenses. When notified of the employer's intent to utilize volunteers, union representatives objected to the project but made no request to meet or bargain. Rather, the union filed this unfair labor practice charge after the plan was implemented. Under the circumstances, no refusal to bargain can be found. An employer's duty to bargain is conditioned upon a request for bargaining from the bargaining agent. Complaints or comments about an employer's action do not constitute a bargaining demand. Even if a proper request had been made, no bargaining violation would have resulted because the union failed to prove that use of the volunteers has other than a *de minimi* impact upon the unit. Parking enforcement is not a major part of a public safety officer's duties, and unit members continue to perform these duties in conjunction with the senior citizen volunteers. Moreover, the dispute is not amenable through the collective bargaining process because it was not, in any way, based on labor costs. Accordingly, the union failed to establish that the employer unilaterally removed bargaining unit work. No exceptions were filed to the ALJ's decision.

City of Detroit (Department of Transportation) -and- Department of Transportation Foremen's Association, Chapter 337 -and- Jeffrey D. Boyd
MERC Case Nos. C97 B-32 & CU97 B-5, issued September 15, 1998

MERC found that charging party had not shown good cause for his failure file timely exceptions to the ALJ's recommended order dismissing his charges or his failure to make a timely request for an extension of time. Accordingly, the Commission denied his motion to set aside its order adopting the ALJ's decision. Charging party's counsel claimed that he did not receive a copy of the ALJ's decision and recommended order until fifteen days after it was mailed (seven days before the exceptions were due), because he abruptly decided to move his offices and did not notify the Commission of the change. In addition, the charging party and his counsel took some time deciding whether to file exceptions. These explanations were inadequate because the charging party offered no reason for his failure to request an extension of time to file exceptions.

American Federation of State, County and Municipal Employees, Council 25 -and- Wendell W. Phillips
MERC Case No. CU98 C-10, issued September 23, 1998

The ALJ recommended dismissal of a charge when the charging party failed to respond to an order to show cause and it was clear that the charge was not filed within the six-month limitations period under PERA. No exceptions were filed to the ALJ's decision.

International Brotherhood of Electrical Workers, Local 17 -and- Gilmer W. Scott
MERC Case No. CU98 C-13, issued September 24, 1998

The ALJ concluded that dismissal was warranted where the charging party failed to appear at the hearing to present

evidence in support of his case. No exceptions were filed to the ALJ's decision.

Flint Board of Education -and- Congress of Flint School Administrators
MERC Case No. C96 G-162, issued September 24, 1998

The ALJ recommended dismissal of a charge alleging that the employer violated its obligation to bargain in good faith by unilaterally reducing the number of work weeks in the school year. The ALJ concluded that all matters brought before the Commission by way of the unfair labor practice charge had already been considered and disposed of via an arbitrator's award regarding a related grievance. Although the arbitrator stated that he was restricting his review to the question of whether the employer's actions violated the collective bargaining agreement and that he would leave it to MERC to decide whether an unfair labor practice had been committed, the statutory and contractual issues overlapped in this case. The dispute arose during the term of the collective bargaining agreement and both sides essentially acknowledged that this matter was covered by the contract. Moreover, the arbitrator construed the contract and determined that the number of weeks scheduled for administrators was a discretionary matter for the employer to decide. Under these circumstances, the contract controlled, and no PERA issue was presented. No exceptions were filed to the ALJ's decision.

Wayne County (Juvenile Detention Facility) -and- Government Administrators Association (GAA) -and- Sylvia Williams-McLeod, Jomil A. Ferguson, et al.
MERC Case Nos. C96 C-42 & CU96 B-5, issued September 25, 1998

The ALJ recommended dismissal of charges against an employer and a union. The charging parties objected to the promotion of another employee to the position of operations manager. The ALJ found no evidence of any bad faith or arbitrary conduct on the part of the union. The union responded promptly to a grievance filed concerning the promotion and sent a letter to the employer advocating the position of the grievants/charging parties. The fact that the union ultimately agreed with the employer's position regarding the matter is insufficient to establish a PERA violation. The ALJ rejected as "nonsense" the argument that it was improper for the employee to accept the promotion while continuing to serve as an area representative for the union. Such juxtaposition of roles is inherent in a multilevel unit of supervisors. Absent a viable fair representation claim against the union, the breach of contract claim against the employer also fails as a matter of law. No exceptions were filed to the ALJ's decision.

APPELLATE REPORT
By David M. Peltz

MERC decisions pending before the Michigan Court of Appeals:

Wexford County, Board of Public Works (Landfill Division) -and- International Union of Operating Engineers (IUOE), Local 324, AFL-CIO -and- Kandie R. Kelley
MERC Case Nos. C96 D-88, C96 D-89 & R96 C-33
Court of Appeals No. 210971
Primary Issue: whether the employer violated duty to bargain in good faith by unilaterally terminating a practice under which employees employed at a landfill had the right to take and sell scrap metal brought to the landfill.

City of Detroit -and- Association of City of Detroit Supervisors
MERC Case Nos. C95 G-135 & UC94 J-52
Court of Appeals No. 204946
Primary Issue: duty to bargain over the temporary use of nonunit employees

City of Grand Rapids & Grand Rapids Housing Commission v Grand Rapids Assn. of Public Administrators & Grand Rapids Employees Independent Union
MERC Case Nos. C96 E-97 & C96 E-98
Court of Appeals No. 204825
Primary Issue: whether the Housing Commission is a separate employer under PERA

Board of Trustees, Michigan State University -and- Michigan State University Administrative Professional Supervisors Association
MERC Case No. C96 A-16
Court of Appeals No. 208082
Primary Issue: whether employer repudiated the contract by suspending an employee without pay pending an investigation

City of Southfield -and- Police Officers Association of Michigan
MERC Case Nos. UC97 B-16 (Act 312) & D96 A-0129

Court of Appeals No. 208703

Primary Issue: whether emergency dispatchers were employed in a department separate from police and fire and, therefore, not eligible for Act 312 arbitration

County & Sheriff of Montcalm -and- POAM & COAM -and- FOP Lodge 149
MERC Case Nos. R96 J-159 & R96 J-160
Court of Appeals Nos. 202793 & 202794
Primary Issue: whether MERC erred in directing an election allowing employees of the Montcalm Sheriff's Department to determine whether they wished to be represented by the FOP or the POAM and COAM

County & Sheriff of Montcalm -and- POAM & COAM
MERC Case No. C97 G-149
Court of Appeals No. 210068
Primary Issue: duty to bargain while appeal of direction of election is pending

Frenchtown Charter Township -and- International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW
MERC Case No. C95 L-251

Court of Appeals No. 211639
Primary Issue: propriety of MERC's dismissal of late-filed exceptions

Coldwater Community Schools -and- Coldwater Educational Support Personnel Association
MERC Case No. UC97 G-33
Court of Appeals No. _____
Primary Issue: whether substitute bus drivers are casual employees

Detroit Board of Education -and- Detroit Federation of Teachers -and- Sheila Knubbe
MERC Case Nos. C97 I-204 & CU97 I-34
Court of Appeals No. 214060
Primary Issue: collateral estoppel effect of Teacher Tenure Commission decision

MERC decisions pending before the Michigan Supreme Court:

Jackson Fire Fighters Association, Local 1306, IAFF, AFL-CIO -and- City of Jackson
MERC Case No. CU94
Court of Appeals Nos. 192470, 193765, 197794 & 197795
Supreme Court No. 111509 (order denying leave issued 6/16/98; motion for reconsideration pending)
Primary Issue: whether minimum manning provision constitutes a mandatory subject of bargaining

2ND LABOR LAW CONFERENCE EVALUATION RESULTS

With our second annual Public Sector Labor Law Conference complete, and the 1999 conference in the planning stage, we would like to thank all of you who took the time to complete the evaluation forms. More than 200 people attended the two day conference. As with any program of this kind, audience critique and suggestions are vital for improving future conferences.

88% of those who responded rated the conference overall excellent to good. Among the qualities and benefits of the conference cited were agenda, workshops, knowledge and expertise of the 46 speakers, facility and location.

Based on your response, next year we hope to conduct a day and a half conference. This will continue to allow for a variety of workshops and interactive discussions.

We also asked for your suggestions on presentations for the next conference and we hope to include some of them in our next conference.

Again, we thank all those who completed the evaluation form and look forward to seeing everyone at the next Michigan Employment Relations Commission and Bureau of Employment Relations Public Sector Labor Law Conference.

Hold the Date
MERC's 3rd Annual Conference on Labor Law Slated for May 13 & 14, 1999

In response to the success of our first and second annual Public Sector Labor Law Conference, the Michigan Employment Relation Commission and the Bureau of Employment Relations present the third annual Public Sector Labor Law Conference slated for May 13 & 14, 1999. MERC and BER will host the conference, in conjunction with the Labor and Industrial Relations Program of Michigan State University and the Labor and Employment Law Section of the State Bar of Michigan, at the Kellogg Hotel and Conference Center, East Lansing, Michigan. Again, this conference will be designed for people who work in public sector labor relations – arbitrators; attorneys; academics; union

officers: staff and members; elected officials; and administrators and staff of all size public employers.

Anyone with suggestions for topics and/or speakers should contact Maria Selweski at BER at 313-256-1111. More information will be forthcoming, as plans begin to take shape.

MERC ON-LINE

Come visit us on the Internet at http://www.cis.state.mi.us/ber. The Bureau of Employment Relations is on-line and we are continuously adding and improving our web page, so please come visit our site on a regular basis. Your suggestions as to its future improvement will be appreciated.

NEW LOCATION

The Lansing Medication Officer of the Bureau of Employment Relations has moved to 1375 S. Washington, Lansing. It is located south of I-496. Maps with detailed directions are available by calling Milli Kennedy at 517-334-9712. The new offices are very nice with free parking directly behind the building. There are three conference rooms available, without charge, for fact-finding and arbitration hearings, and mediation sessions, as well as Administrative Law Judge hearings. Feel free to stop by and visit, even if you do not have a scheduled hearing.

DEATH OF WHEELER WITTE
by Jim Kurtz

The staff of the Commission and Bureau were saddened to learn of the recent death of one of our retired mediators, Wheeler J. Witte, at the age of 82. Wheeler died of congestive heart failure on June 15, 1998, in Wyoming, Michigan. He was survived by his wife, Ann, and their two sons, Doug and Larry.

Wheeler was born in the Upper Peninsula, and began his career working with the lumber unions. He later worked with the Teamsters, Laborers, and Operating Engineers Unions, he was president of UAW Local 952, and he also served in World War II. Wheeler then spent 20 years working for this Commission, primarily as a mediator, but also as an election officer for a short time. He served in both the Detroit and Grand Rapids offices, retiring in 1986. After retiring, Wheeler continued to be active in the arbitration and mediation of labor relations disputes, along with his many other pursuits. Wheeler was a colorful and innovative specialist in the labor relations field. He will be missed.

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*** The Bureau of Employment Relations does not accept service by e-mail.**

ACT 312 DECISIONS & FACT FINDING REPORTS
April 1, 1998- September 30, 1998

Act 312

RECEIPT DATE	EMPLOYER	UNION	ARBITRATOR
04/07/98	Mt. Morris Township	Police Officers Labor Council	Elaine Frost
04238/98	Grosse Pointe Woods, City of	Police Officers Labor Council	William E. Long
04/23/98	Canton Township	Police Officers Labor Council	Paul Jacob
04/29/98	Grosse Pointe Farms, City of	Police Officers Labor Council	Mark J. Glazer

05/19/98	Belding, City of	SEIU Local 586 - Firefighters	George J. Brannick
05/21/98	Mackinac Co. Sheriff Dept.	Police Officers Labor Council	Sheldon H. Adler
05/27/98	Harper Woods, City of	Police Officers Labor Council	Kenneth P. Frankland
06/12/98	Alpena, County of	Police Officers Assoc. of MI	Sheldon H. Adler
06/18/98	Harper Woods, City of	Harper Wds Fire Fighter 1188	George J. Brannick
07/02/98	Livonia, City of	Livonia Fire Fighters Assoc.	Theodore J. St. Antoine
07/31/98	Traverse City Police Dept.	Teamsters Local 214	Barbara A. Ruga
08/07/98	Ottawa County	Police Officers Assoc. of MI	George T. Roumell, Jr.
08/14/98	Kalamazoo Sheriff	Command Officers Assoc of MI	George J. Brannick
08/19/98	Ann Arbor, City of	Ann Arbor Police Officers Assoc.	Benjamin W. Wolkinson
09/14/98	Wayne, County of	Wayne County Sheriffs Local 502	Jack Stieber

Total Awards/Reports Received: 15

Fact Finding

RECEIPT DATE	EMPLOYER	UNION	FACT FINDER
04/07/98	Detroit, City of (Supervisors)	COD/ACODS	Barry C. Brown
05/22/98	Northville, City of	Michigan Assoc. of Public Employees	Barry C. Brown
08/14/98	Central Michigan University	CMU Police Officer Assoc.	John W. Cummiskey
09/01/98	Traverse City, City of	Teamsters 214 - GME Unit	Mark J. Glazer
09/02/98	Central Michigan University	CMU-Supervisory/Technical Assoc.	Benjamin A. Kerner
09/02/98	Central Michigan University	MEA	Benjamin A. Kerner
09/08/98	Ottawa County Court	Ottawa County Employees Assoc.	Jerold D. E. Lax
09/15/98	Sturgis Hospital	SEIU	Ildiko Knot
09/18/98	Roscommon County Road Comm	Teamsters 214	Dr. Richard N. Block

Total Awards/Reports Received: 9

MERC MEETING SCHEDULE

- October 9, MERC Advisory Board meeting - 9 a.m. - Genoa Woods Conference Center - Brighton
- October 9, MERC meeting - 11 a.m. - Genoa Woods Conference Center - Brighton
- November 5, MERC meeting - 10 a.m. - 1375 S. Washington, Lansing
- December 17, MERC meeting - 10 a.m. - 1200 Sixth St., Ste. 1400 - Detroit